

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Philips Medical Capital, LLC, a  
Delaware limited liability company,

No. C-06- 4470 JSW (WDB)

Plaintiff,

v.

MEDICAL INSIGHTS  
DIAGNOSTICS CENTERS, INC., a  
California corporation, et al.,

**SUPPLEMENTAL REPORT AND  
RECOMMENDATION RE  
APPLICATIONS FOR WRITS OF  
ATTACHMENT AND WRIT OF  
POSSESSION**

Defendants.

\_\_\_\_\_/  
and related cross action  
\_\_\_\_\_/

On October 24, 2006, defendants filed a document styled “Objection to Proposed Order re: Applications for Writ of Attachment and Writ of Possession.”

Defendants’ “objection” in effect is a camouflaged motion for reconsideration. Defendants have not, however, presented a proper basis for obtaining leave to file a motion for reconsideration. Local Rule 7-9. Defendants’ failure to present an argument that existed at the time they filed their opposition to the writ applications does not satisfy the requirements of Local Rule 7-9(b).

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Moreover, even if we were to consider the merits of defendants' new argument, we would RECOMMEND that the District Court find that defendants' have not demonstrated the probable validity of their claim that representations made by PMS should be attributed to PMC. See, Report and Recommendation, filed October 11, 2006.<sup>1</sup>

IT IS SO REPORTED AND RECOMMENDED.

Dated: October 25, 2006

/s/ Wayne D. Brazil  
WAYNE D. BRAZIL  
United States Magistrate Judge

Copies to:  
parties,  
JSW, wdb, stats

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<sup>1</sup>Defendants "Objection" reiterated argument from their opposition to PMC's motion to dismiss defendants' counterclaim. "Objection" at 3. Although mere allegations that PMS and PMC are agents of each other might be sufficient to survive a motion to dismiss, in order to oppose the writ applications, defendants must present some evidence that would support a finding that their claim is probably valid. This they have not done. "Objection" at 3 ("the warranties made by PMSNA are binding on PMC because it has been alleged that PMC and PMSNA were joint venturers and agents of each other." Emphasis added).